

TAX INFO

Dated: 29.10.2020

Latest update on GST Law: Information regarding **HC allows petitioner to apply to GST Council to get CENVAT credit benefit** based on the **Judgement issued by Rajasthan High Court.**

We expressly disclaim liability to any person in respect of anything done in reliance of the contents of this publication

HC allows petitioner to apply to GST Council to get CENVAT credit benefit

Name of Petitioner	Trivedi Ventures LLP
Name of Respondent	Union of India
Name of Court	Rajasthan High Court
Appeal Number	D.B. Civil Writ Petition No. 4182/2020
Date of Judgement	30/07/2020

The petitioners have prayed that they may be permitted to file Form TRAN-1 in compliance of CGST Act, 2017 in order to enable the petitioners to avail Transitional Credit in Electronic Credit Ledger. It was also prayed that the respondents should give effect to Form GST Tran-1 that had been manually submitted to the respondent-department to avail relevant Legitimate Input Tax Credit.

Present petition is liable to be disposed of in terms of the order passed in Obelisk Composite Technology LLP (supra). Order passed in Obelisk Composite Technology LLP (supra) reads as under:

The petitioner M/s Obelisk Composite Technology LLP through its partner has made a prayer seeking writ of mandamus to the effect that the filing of declaration in form GST Trans1 may be allowed to enable the petitioner to claim transition credit of eligible duties on the appointed day in terms of Section 140 of the Central Goods and Service Tax Act, 2017 and to credit the same in its relevant ledger account or in the alternative to refund the eligible amount to the petitioner.

A further prayer has been made to declare Rule 117 of the CGST Rules to claim transitional Credit violates the Constitutional provisions and therefore it may be turned down or ordered to be read down as if there is no last date to file TRANS-1. A further prayer has been made to direct the respondents to revive the facility of filing TRANS-1 on common portal.

Learned counsel for the State submits that the Union of India has extended the last date for submitting the GST TRANS-1 up to 31st December, 2019 but the procedure stipulated under

Sub-rule 1(A) of Rule 117 requires the petitioner to make application through the GST counsel who may make a recommendation to the Commissioner who shall act on the basis of such direction of the counsel.

It was held that the challenge to the constitutional validity of Rule 117 no more being res integra, this Court cannot entertain such prayer and accordingly reject the same, however, considering the fact that the Union of India and the Finance Department have extended the period contemplated under Rule 1A of Rule 117 till 31st December, 2019, we grant liberty to the petitioner to make an application before GST Council (through Standing Counsel, who is further requested to hand over the same to the jurisdictional officer) for forwarding the same to the GST Council to issue requisite certificate of recommendation along with requisite particulars, evidence and a certified copy of the order instantly and such decision be taken forthwith and if the petitioner's assertion is found to be correct, the GST Council shall issue necessary recommendation to the Commissioner to enable the petitioner to get the benefit of CENVAT credit within the stipulated time as stipulated by the Union of India i.e. on or before 31st December, 2019.

Accordingly, the Court granted liberty to the petitioners to make an application before GST Council through Standing Counsel, who is further requested to hand over the same to the jurisdictional officer for forwarding the same to the GST Council to issue requisite certificate of recommendation along with requisite particulars, evidence and a certified copy of the order instantly and such decision be taken forthwith and if the petitioners' assertion is found to be correct, the GST Council shall issue necessary recommendation to the Commissioner to enable the petitioners to get the benefit of CENVAT credit within the stipulated time as stipulated by the Union of India.

Notification No. 80/2020 (Central Tax) dated 28.10.2020

The Government has extended the filing of Annual Return GSTR-9/9A and GST Audit Report in GSTR-9C up to 31.12.2020 for the Financial Year 2018-19.

Suresh Aggarwal, Advocate

Compliance & Litigation under GST

Address: House No. 54, Pocket A-3, Sector-5, Rohini- 110085

Phone:91-9810032846; 011 - 45131427

Email:sureshagg@gmail.com

Website: <http://www.sureshtaxation.com>